EXHIBIT 2
DATE Jan 21, 2011
HB 51

House Bill 51
2011 Legislative Session
State Building Energy Conservation Program
FACT SHEET

This bill is in response to a legislative audit of the State Buildings Energy Conservation Program (SBECP) that identified inconsistencies with the portions of the program funded with general obligation bonds. It affects only projects from bonds sold between 1993 and 2006.

Background on State Buildings Energy Conservation Program

The State Building Energy Conservation Program improves energy efficiency in state facilities at no additional cost to state government. It does this by using an agency's utility budget to fund energy improvements over time. First, a project is identified that can reduce energy costs in a facility. A technical energy study is then completed and future energy savings estimated. These savings are typically from reduced electricity and natural gas use, but may include water, propane or other utility costs. Projects are designed so that reduced energy costs cover all construction and financing costs. The program funds construction and repayments are collected from agencies over time.

There are two versions of the program. The "new" program is a self funded revolving program that was started in 2007. The "old" program used general obligation bonds. Repayments from projects were collected and used to make payments on the bonds, and then any remaining funds were swept to the Long Range Building Program. This bill deals with the "old" program.

What the Bill Does

This bill does four things:

- Separates out the old program from the new program in statute to make the operating differences clear;
- Establishes the length of time for repayment of bond funded projects;
- Allows for the current practice of collecting all payments from agencies, making all bond payments, then making one sweep to the Long Range Building Program; and
- Formally creates the energy conservation debt service account.

Need to Establish a Length of Time for Repayment

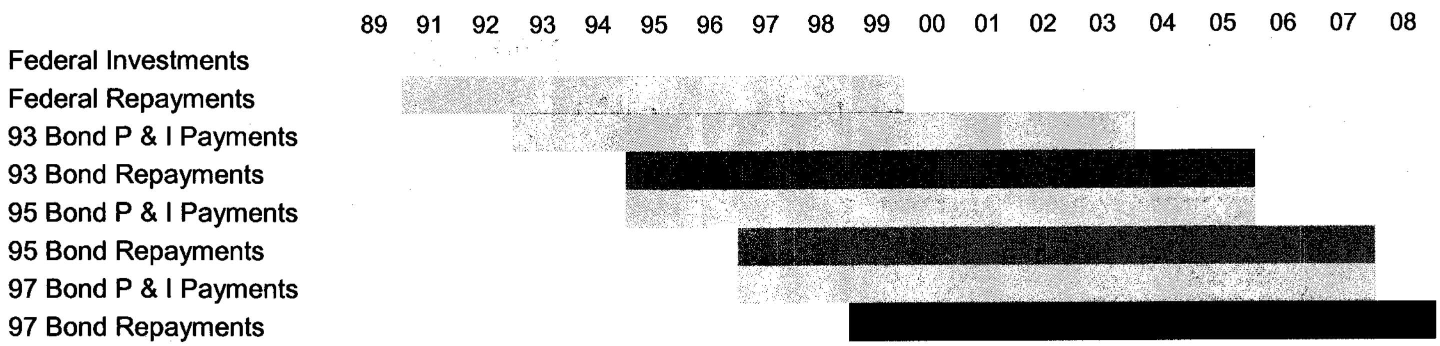
Current statute offers no clear guidance on how long to collect energy savings. DEQ has historically collected savings for each project over a period longer than the bond term and based on the type of project funded. Projects are reviewed after 10 or 15 years, depending on the bond term. Payments are then generally decreased over the next five years and eventually stopped. These later repayments provide cash flow for additional projects and additional revenue to the LRBP.

DEQ is requesting language that defines the term of repayment as the number of years equal to the term of the bond, plus one year. The additional one year will cover any unanticipated costs for the program, ensure that bond repayments can be made, and allow for a final sweep to the LRBP. Agencies will pay less, the sweep to the LRBP will be lower, and the amount not needed for repayment will be available sooner for other purposes.

Collecting Repayments from Agencies and Sweeping Excess Savings to the Long Range Building Program

State agencies enter into projects with DEQ and agree to repay the project using energy cost savings. The program operates by having all repayments come into DEQ. The repayments are used to make principal and interest payments on all bonds. Funds in excess of what are needed to make the payments are swept to the Long Range Building Program. This process allows for repayments from projects from earlier bonds to pay for the principal and interest on future bonds by covering the gap in time from when a bond is sold to when repayments come in. The following chart illustrates this process but is not complete.

Collecting Repayments



This process is not the same as defined in statute. The statute identifies that repayments be broken into two parts: agencies would pay DEQ for the amount needed to pay bond costs and would pay LRBP separately for the additional amount of energy savings. This is impractical. It creates the risk of not making the general obligation bond payment if any single project does not make its repayment, even though in aggregate there would have been enough money collected. While it is very rare that a project cannot repay, or is significantly delayed in repaying a bond, there have been a few instances where payments were not fully collected. Paying from one aggregated account provides a priority for bond repayment, with any excess payments to the Long Range Building Program a second priority.

The two payment process does not allow for a funding source for future bonds. It disburses savings from each bond only for the purpose of repaying the bond, and it does not allow for the savings to be used to pay for the principal and interest costs on the next bond while the new projects are being planned and constructed.

Collecting all payments into one account best assures sufficient funds to meet the state's bond obligation. When a bond is sold, repayment commences in about six months. However, it takes one to two years for a project to be completed and for repayment to come in from agencies. There must be a source of funds to cover the time when bond repayments begin and project savings are actually collected.

Clarification and Clean Up

This bill separates the bond-funded program from the revolving program, and creates in statute an account that has been in actual use since 1993.

This bill also creates the energy conservation debt service account that is referred to in statute, but was never created in statute.

HB 51 Section-by-Section Information

Section 1 — amends 90-4-605 — preparation of energy conservation program.

- Separates projects funded with bond proceeds (i) from projects funded with general funds or energy conservation capital project account funds (ii).
- Treats the two funding sources in a consistent way by requiring that energy savings must cover the cost to repay the project plus financing costs, whether bond payment costs or annual interest payments.
  - Directs that projects funded with bond proceeds must have estimated savings greater than the bond payment costs;
  - Directs that projects funded with general funds or energy conservation capital projects account funds must have estimated savings greater than the cost of the project plus annual interest payments.

Section 2 — amends 90-4-612 — principal and interest — fiscal agent — deposit of proceeds.

- Names the energy conservation program debt service account, created in the next section, to clarify where proceeds are deposited.

Section 3 — amends 90-4-614 — appropriation of energy cost savings.

Current statute calls for each agency to provide two (2) payments for projects funded with bond proceeds — one payment to DEQ to repay the bond, and the second payment to the Long Range Building Program. It is not practical to operate the program based on two separate payments on an individual project basis and the program has never done so. Payments from projects are aggregated and used to pay the debt service on all bonds, and the remaining balance of funds is swept to the Long Range Building Program.

- (1) Clarifies that this section applies to projects funded with bonds.
- Removes the requirement for appropriating a separate amount for the debt service (1) (b) and for the excess energy cost savings (2) (b).
- Continues to require that the current level utility appropriations be reduced by the amount of energy savings (3).
- Establishes a time for the energy cost savings to be transferred to be equal to the term of the bonds plus one year. Current practice is to review a project after 10 or 15 years, depending on the bond, and adjust payments downwards for about five (5) years.
- The shorter repayment time will reduce the total amount of funds collected. This will result in two (2) impacts:
  - Fewer funds collected will result in fewer funds available to sweep into the Long Range Building Program.
  - More funds will be available sooner to the general, state, or federal fund that had been used to make the repayments.

Section 4 — new section — energy conservation debt service account.

- (1) Creates in statute the energy conservation debt service account used for many years.
- (2) Directs DEQ to transfer money in excess of funds needed to satisfy principal and interest on the bonds from the energy conservation debt service account to the Long Range Building Program account. This establishes in statute DEQ practice since 1995.